

FILED

DEC - 6 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name **FLOWERS** **ALVIN** **S.**  
(Last) (First) (Initial)

Prisoner Number **T-91323**Institutional Address **SALINAS VALLEY STATE PRISON, FAC. B, BLDG 1 - 131****P.O. BOX 1050, SOLEDAD, California 93969-1050****UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA****Alvin Scott Flowers**

(Enter the full name of plaintiff in this action.)

vs.

**Michael Evans, Warden, ET, AL**

(Enter the full name of respondent(s) or jailor in this action)

Case No.

(To be provided by the clerk of court)

**PETITION FOR A WRIT  
OF HABEAS CORPUS****JF  
(PR)****Read Comments Carefully Before Filling In****When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose  
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda  
 13 County Superior Court, Oakland):

14 Superior Court Placer County

15 Court Location

16 (b) Case number, if known C044333/WHC 700 6223894

17 (c) Date and terms of sentence April 28, 2003

18 (d) Are you now in custody serving this term? (Custody means being in jail, on  
 19 parole or probation, etc.) Yes X No       

20 Where? Salinas Valley State Prison, Soledad, California

21 Name of Institution: Salinas Valley State Prison

22 Address: 31625 Why 101, Soledad, California

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Penal Code § 191.5, Veh. Code § 23153(a) & (b)

27

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Yes \_\_\_\_\_ No X

Any other plea (specify) \_\_\_\_\_

Jury X Judge alone \_\_\_\_\_ Judge alone on a transcript \_\_\_\_\_

Yes \_\_\_\_\_ No   X  

Yes ✓ No       

Result: denied

- 3 -

petition?

Yes \_\_\_\_\_ No X

(c) Was there an opinion?

Yes \_\_\_\_\_ No X

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes X No \_\_\_\_\_

If you did, give the name of the court and the result:

Sup. Ct. on - Habeas Corpus - Court  
of Appeal and Co. Supreme Court - Denied

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal?

Yes X No \_\_\_\_\_

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28

U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Superior Court Placer Co.Type of Proceeding: Writ of Habeas Corpus

Grounds raised (Be brief but specific):

a. Wrongfully Charged and Convictedb. I.A.C.c. Speedy Triald. Trial Court Abuse of DiscretionResult: Denied Date of Result: 9/06II. Name of Court: California Court of AppealsType of Proceeding: On Habeas Corpus

Grounds raised (Be brief but specific):

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a. Same as Above

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result: Denied Date of Result: 12/06

III. Name of Court: California Supreme Court

Type of Proceeding: On Habeas Corpus

Grounds raised (Be brief but specific):

a. Same as Above

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result: Denied Date of Result: 10/07

IV. Name of Court: \_\_\_\_\_

Type of Proceeding: \_\_\_\_\_

Grounds raised (Be brief but specific):

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes \_\_\_\_\_ No X

Name and location of court: \_\_\_\_\_

# B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Petitioner Wrongfully Charged and  
6 Convicted (U.S. CA. 14 Amend.)

7 Supporting Facts:

8 Rogers v. Peck (1905) 199 U.S. 425  
9 Garland v. Washington (1914) 232 U.S. 642  
10 Jackson v. Virginia (1979) 443 U.S. 307

11 Claim Two: Ineffective Assistance of Counsel  
12 (U.S. CA. 6 Amend.)

13 Supporting Facts:

14 People v. Pope 23 CA1 3d 412 (1979)  
15 Strickland v. Washington (1984) 466 U.S. 668

16  
17 Claim Three: Speedy Trial (U.S. CA. 6 Amend.)

18  
19 Supporting Facts:

20 United States v. Doggett 505 U.S. 651  
21 Barker v. Wingo (1972) 407 U.S. 514  
22 United States v. Marion (1971) 404 U.S. 307

23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

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1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_

7 Do you have an attorney for this petition?

Yes \_\_\_\_\_ No ☒

8 If you do, give the name and address of your attorney:

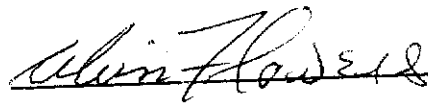
9 \_\_\_\_\_

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on

11-17-07

14 Date

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Signature of Petitioner

(Rev. 6/02)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALVIN SCOTT FLOWERS

Plaintiff,

vs.

Michael Evans, Warden, ET, AL

Defendant.

CASE NO. \_\_\_\_\_

PRISONER'S  
APPLICATION TO PROCEED  
IN FORMA PAUPERIS

I, Alvin Scott Flowers, declare, under penalty of perjury that I am the plaintiff in the above entitled case and that the information I offer throughout this application is true and correct. I offer this application in support of my request to proceed without being required to prepay the full amount of fees, costs or give security. I state that because of my poverty I am unable to pay the costs of this action or give security, and that I believe that I am entitled to relief.

In support of this application, I provide the following information:

1. Are you presently employed? Yes \_\_\_ No X

If your answer is "yes," state both your gross and net salary or wages per month, and give the name and address of your employer:

Gross: 0 Net: 0

Employer: \_\_\_\_\_

If the answer is "no," state the date of last employment and the amount of the gross and net salary

PRIS. APPLIC. TO PROC. IN FORMA



1 and wages per month which you received. (If you are imprisoned, specify the last place of  
2 employment prior to imprisonment.)  
3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_

6 2. Have you received, within the past twelve (12) months, any money from any of the following  
7 sources:

- 8 a. Business, Profession or Yes \_\_\_ No X  
9 self employment  
10 b. Income from stocks, bonds, Yes \_\_\_ No X  
11 or royalties?  
12 c. Rent payments? Yes \_\_\_ No X  
13 d. Pensions, annuities, or Yes \_\_\_ No X  
14 life insurance payments?  
15 e. Federal or State welfare payments, Yes \_\_\_ No X  
16 Social Security or other govern-  
17 ment source?

18 If the answer is "yes" to any of the above, describe each source of money and state the amount  
19 received from each.  
20 \_\_\_\_\_  
21 \_\_\_\_\_

22 3. Are you married? Yes \_\_\_ No X

23 Spouse's Full Name: N/A

24 Spouse's Place of Employment: \_\_\_\_\_

25 Spouse's Monthly Salary, Wages or Income:

26 Gross \$ \_\_\_\_\_ Net \$ \_\_\_\_\_

27 4. a. List amount you contribute to your spouse's support : \$ \_\_\_\_\_

28 b. List the persons other than your spouse who are dependent upon you for support  
PRIS. APPLIC. TO PROC. IN FORMA

and indicate how much you contribute toward their support. (NOTE: For minor children, list only their initials and ages. DO NOT INCLUDE THEIR NAMES.)

5. Do you own or are you buying a home? Yes \_\_\_ No ☒

Estimated Market Value: \$ \_\_\_\_\_ Amount of Mortgage: \$ \_\_\_\_\_

6. Do you own an automobile? Yes \_\_\_ No ☒

Make \_\_\_\_\_ Year \_\_\_\_\_ Model \_\_\_\_\_

Is it financed? Yes \_\_\_ No ☒ If so, Total due: \$ \_\_\_\_\_

Monthly Payment: \$ \_\_\_\_\_

7. Do you have a bank account? Yes \_\_\_ No ☒ (Do not include account numbers.)

Name(s) and address(es) of bank: \_\_\_\_\_

Present balance(s): \$ \_\_\_\_\_

Do you own any cash? Yes \_\_\_ No ☒ Amount: \$ \_\_\_\_\_

Do you have any other assets? (If "yes," provide a description of each asset and its estimated market value.) Yes \_\_\_ No ☒

8. What are your monthly expenses?

Rent: \$ Ø Utilities: Ø

Food: \$ Ø Clothing: Ø

Charge Accounts:

Name of Account	Monthly Payment	Total Owed on This Acct
N/A	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

9. Do you have any other debts? (List current obligations, indicating amounts and to whom they are payable. Do not include account numbers.)

PRIS. APPLIC. TO PROC. IN FORMA

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10. Does the complaint which you are seeking to file raise claims that have been presented in other lawsuits? Yes \_\_\_ No X

Please list the case name(s) and number(s) of the prior lawsuit(s), and the name of the court in which they were filed.

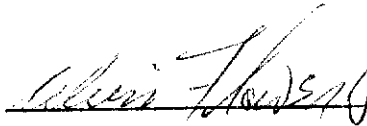
N/A

I consent to prison officials withdrawing from my trust account and paying to the court the initial partial filing fee and all installment payments required by the court.

I declare under the penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in the dismissal of my claims.

11-17-07

DATE



SIGNATURE OF APPLICANT

Case Number: \_\_\_\_\_

**CERTIFICATE OF FUNDS**  
**IN**  
**PRISONER'S ACCOUNT**

I certify that attached hereto is a true and correct copy of the prisoner's trust account statement showing transactions of Allen S. Flowers for the last six months at

[prisoner name]

\_\_\_\_\_ where (s)he is confined.

[name of institution]

I further certify that the average deposits each month to this prisoner's account for the most recent 6-month period were \$ \_\_\_\_\_ and the average balance in the prisoner's account each month for the most recent 6-month period was \$ \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Authorized officer of the institution]

ALVIN SCOTT FLOWERS, T-91323  
SALINAS VALLEY STATE PRISON  
FACILITY B, BLDG. 5 - 131  
P.O. BOX 1050  
SOLEDAD, CA 93960-1050

In Pro Per

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALVIN SCOTT FLOWERS	)	Case No:	
Petitioner,	)	C044333/WHC 700	
	)		
vs	)		
	)		
People of the State of Calif.	)	WRIT OF HABEAS CORPUS	
Respondent,	)	CONVICTION AND SENTENCE	

WRIT OF HABEAS CORPUS  
BRIEF AND EXHIBITS IN SUPPORT THEREOF

Petitioner, Alvin Scott Flowers respectfully submits this  
Petition to the United States District Court of the State of  
California, after having received denials in the Superior Court  
of Placer County, and the Appellate Court for the Third District,  
and the Supreme Court of the State of California, on his Writ  
of Habeas Corpus. Petitioner, Mr. Flowers, asks the Court for  
review on his Writ, Case No: C044333/WHC 700 - 6223894, S152382.

The following Brief and Exhibits in support thereof for  
Petitioner's request for review in said petition in accordance  
to the California Rules of Court and in Compliance with the  
Supreme Court of the State of California.

ALVIN SCOTT FLOWERS ON HABEAS CORPUS

**TABLE OF CONTENTS**

	<b><u>Page #</u></b>
Petition of Writ of Habeas Corpus	1
Issues Presented	4,9,12,16,21
Petition	1
Verification	2
 <b><u>Constitutional Arguments:</u></b>	
Petitioner Wrongfully Charged and Convicted	4
Ineffective Assistance of Counsel	9
Petitioner's Speedy trial Rights	12
Imposition of Fines	16
Trial Court Abuse of Discretion	21
 <b><u>Constitutional Provisions:</u></b>	
 <b><u>United States Constitution</u></b>	
Fifth	4
Sixth	9,12
Fourteenth	9
 <b><u>California Constitution</u></b>	
Article I, § 15	12

TABLE OF AUTHORITIES

	<u>Page #</u>
Rogers v Peck (1905) 199 U.S. 425	6
Garland v Washington (1914) 232 U.S. 642	6
In Re: Oliver (1948) 333 U.S. 257	6
People v Burnett 71 Cal. App. 4th 151	6
Jackson v Virginia (1979) 443 U.S. 307	7
People v Cuevas (1995) 12 Cal. 4th 252	7
Lillian v Superior Court (1984) 160 Cal. App. 3d. 314	7
In Re: Winship (1970) 397 U.S. 358	8
People v Hockersmith Cal. App. 3d. 968	8
People v Pope (1979) 23 Cal. 3d. 412	10
Strickland v Washington (1984) 466 U.S. 668	10
In Re: Alvernaz (1992) 2 Cal. 4th	11
U.S. v Dogget 505 U.S. 651	12
Barker v Wingo (1972) 407 U.S. 514	13
Gerston v Pugh (1975) 420 U.S. 103	13
County of Riverside v McLaughlin (1991) 500 U.S. 44	13
U.S. v Marion (1971) 404 U.S. 307	14

1	Strunk v U.S. (1973)	14
2	412 U.S. 434	
3	Miranda v Arizona (1966)	14
4	385 U.S. 436	
5	People v McMahan (1992)	16
6	Cal. App. 4th 740	
7	People v Frye (1994)	17
8	21 Cal. App. 4th 1483	
9	People v Adams (1990)	18
10	224 Cal. App. 3d. 705	
11	People v Goulart (1990)	18
12	224 Cal. App. 3d. 71	
13	People v Ryan (1988)	18
14	203 Cal. App. 3d. 189	
15	People v Vournazos (1988)	18
16	198 Cal. App. 3d. 948	
17	People v Backer (1986)	18
18	182 Cal. App. 3d. 921	
19	People v Castro (1994) 19	
20	94 Cal. App. 4th	
21	People v Blankenship (1989)	19
22	213 Cal. App. 3d. 992	
23	People v Neal (1993)	20
24	19 Cal. App. 4th 1114	
25	People v Schenck (1994)	20
26	23 Cal. App. 4th 698	

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1 ALVIN SCOTT FLOWERS, T-91323  
2 SALINAS VALLEY STATE PRISON  
3 FACILITY B, BLDG. 5 - 131  
P.O. BOX 1050  
4 SOLEDAD, CA 93960-1050

5 In Pro Per

6 US DISTRICT COURT  
7  
8 NORTHERN DISTRICT OF CALIFORNIA

9 Alvin Scott Flowers ) Case No: C044333/WHC 700  
10 Petitioner, )  
11 vs )  
12 People of the State of Calif. ) WRIT OF HABEAS CORPUS  
13 Respondent, ) CONVICTION AND SENTENCE

14 WRIT OF HABEAS CORPUS  
15 BRIEF AND EXHIBITS IN SUPPORT THEREOF

16 1.

17 Petitioner, Alvin Scott Flowers, respectfully petitions  
18 this Court on Writ of Habeas Corpus after being denied on Writ  
19 of Habeas Corpus by the Superior Court of Placer County, and  
20 the Court of Appeal for the Third District, and the Supreme Court  
21 of the State of California, by this verified Petition sets fourth  
the following facts and causes for the granting of this petition.

22 2.

23 Petitioner is presently unlawfully incarcerated by the Deputy  
24 Director of the Dept. of Corrections and M. Evans, Warden of  
25 Salinas Valley State Prison, Soledad, California. Petitioner  
26 is serving a 30 year to life term which was unlawfully imposed  
27 on April 28, 2003 by the Superior Court of Placer County.

28 ALVIN SCOTT FLOWERS ON HABEAS CORPUS

3.

Petitioner is filing with this District Court pursuant to a denial issued by Placer County Superior Court on October 10, 2006 in compliance with California Constitution, Article VI, Section 11.

#### INTRODUCTION

An information was filed on September 11, 2001 by the District Attorney of Placer County charging the Petitioner (Alvin Scott Flowers) with three felony counts. Count 1, in violation of the California Penal Code Section § 191.5, Gross Vehicular Manslaughter. Count 2, in violation of California Vehicle Code Section § 23153 subd. (a), Driving while under the influence and causing injury. Count 3, in violation of the California Vehicle Code Section § 23153 subd. (b), Driving with a blood alcohol level of 0.0890 causing injury. There were Special Allegations filed with Counts 1 and 2 that alleged Petitioner caused injury or death to one or more victims in violation of California Penal Code Section § 12022.7 subd. (a). It was further alleged Petitioner suffered three prior felony convictions in violation of California Penal Code Sections § 667 (b)(i) and § 1170.12 subd. (a)-(d). The Petitioner was also charged under California Penal Code Section § 667.5 of having suffered three prior prison terms. On November 28, 2002 the Petitioner was given a Preliminary Hearing in which the court found sufficient evidence to believe Petitioner guilty to the specific charges on the record resulting from a vehicle accident that occurred on September 5, 2001 on Westbound Highway 80. Passenger Rennea Hernandez died at the scene of the accident, Passengers Betty Daley and Jonathan Lamb were the other passengers with the Petitioner, both sustaining minor injuries. Petitioner had to be airlifted to Sutter-Roseville Medical Center.

When the accident occurred, witnesses, James Heatheock and Gary Fitch, truck-drivers that had seen the car traveling 60 -65 miles per hour while

1 passing moments before the accident, Fitch continued West on Hwy. 80 through  
2 Dyack where he came upon a fire on the right shoulder of the embankment, where  
3 the vehicle had gone down the hill. Fitch noticed passenger Lamb was the first  
4 up the embankment. Fitch helped Daley up the embankment and both Lamb and  
5 Fitch carried Hernandez up the embankment. Petitioner (Flowers) was thrown  
6 from the vehicle and crawled up the embankment on his own. Eventually  
7 California Highway Patrolmen, William Weldon and Jeffrey Herbert arrived  
8 proceeding to apply medical attention to the passengers and taking statements  
9 at which time it was clear all passengers were intoxicated and had been drinking  
10 during the evening. After Highway Patrolman Weldon had taken statements of  
11 Lamb and Daley, he proceeded to come to the conclusion, Petitioner was the  
12 driver of the vehicle then stated he told Petitioner, he was under arrest and  
13 phoned ahead to the Auburn California Highway Patrol to obtain and witness  
14 a blood draw at the Medical center. Petitioner was eventually arraigned on  
15 September 11, 2001 and sentenced on April 28, 2003 under the Three Strikes  
16 Law by the Superior Court of Placer County.

## I

PETITIONERS SENTENCE WAS IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION BECAUSE HE WAS WRONGLY CHARGED AND CONVICTED OF OFFENSES NOT NOTICED AT THE PRELIMINARY HEARING

STATEMENT

On September 11, 2001, Petitioner plead NOT GUILTY to a number of charges in violation of California Penal and Vehicle Code. Penal Code Section § 191.5 as Count 1, (Gross Vehicular Manslaughter) and Vehicle Code Section § 23153 subdivisions (A) and (B), (Driving under the influence causing injury) as Count 2 and (Driving with a blood alcohol level of ).08%, as Count 3, it was further alleged that there be Special Allegations charged to Petitioner in violation of California Penal Code Section § 12022.7 causing death or great bodily injury to one or more victims. It was Further alleged pursuant to a violation of California Penal Code Section § 667 (b)-(i) and § 1170.12 (a)-(d), the Petitioner has suffered three prior felony convictions. On (1/20/87) in violation of two counts of (Pen. Code § 211 from Sonoma, California and in violation of (Pen. Code § 459 from Elko, Nevada. The same violations were alleged under California Penal Code Section § 667.5 for prior prison terms.

When the District Attorney asserted the Special Allegations against the Petitioner, in specific, the charge of (Pen. Code § 12022.7), the prior felony convictions became an element of current offense, and the same element cannot be used to increase the maximum mandatory sentence which is implicated here for the offense shown on record. It is also an integral part to plead and prove the prior felony convictions as well as the Special Allegations brought against petitioner at Preliminary Hearing to ensure that there is no violation of (Pen. Code § 654 ) which seems to appear here. There has to be a strict standard of review in order to show the Petitioner has His Due Process Rights protected of multiple or cumulative punishment. Due Process prohibits a

1 criminal conviction except beyond a reasonable doubt, proof of every fact  
2 necessary to constitute a charged crime. Under California Penal Code Section  
3 § 1009 states:

4 "An indictment or accusation cannot be amended so as to change the offense  
5 charged nor an information so as to charge an offense not shown by the evidence  
6 taken at the Preliminary Hearing."

7 A through reading of the Preliminary Hearing Transcripts reveals no  
8 charging or proof of prior felony convictions which became elements of the  
9 current offense through Special Allegation charge, charged and presented at  
10 the Preliminary Hearing by the State. Further, there was no substantial  
11 evidence proving the Special Allegations were committed by the Petitioner  
12 and not by one of the other passengers in the vehicle. On (page 4) lines  
13 7 thru 28 of the Preliminary Transcripts the Court as well as the District  
14 Attorney ( Mr. Gini) states on record of stipulations to one count. Also  
15 on (page 5) line 5 thru 27 and on thru (page 6) of the Preliminary Transcripts  
16 and (page 7) line 1 thru 15 it is indicated of only one exhibit, and the  
17 District Attorney stipulates on line 9 of (page 7) he will file an information  
18 in regard to what is proven during the hearing. Further moving ahead to (page  
19 118) and to (page 119), the court sets the allegation charges over for (10)  
20 ten days. On (page 120) the court sets the arraignment for trial on December  
21 10, 2002. This Preliminary Hearing was held on November 28, 2001.

22 POINTS AND AUTHORITIES

23 The United States Constitution guarantees every defendant the right to  
24 be advised of the nature and cause of the charges against him. This also  
25 includes any and all prior felony convictions that become elements of the  
26 current offense that are used against him as well as Special Allegations used  
27 against him. [Rogers v Peck (1905 199 U.S. 425)][Garland v Washington (1914)  
28 232 U.S. 642]. Both cases state defendants must be given adequate advisement

1 of the charges so they can prepare and present their defense, as well as not  
2 be surprised by evidence offered at Trial, [In Re: Hess (1955) 45 Cal. 2d.  
3 171][In Re: Oliver (1948) 333 U.S. 257, 273]. See also [People v Burnett  
4 71 Cal. App. 4th 151, 83 Cal. Rptr. 2d. 629]. As in Burnett, Petitioner was  
5 denied his Federal Due Process to be given adequate notice and nature of  
6 charges to be brought against him. Specifically, the Petitioner was found  
7 to be guilty of charged offense and Special Allegations under California Penal  
8 Code Section § 667 subd. (b)-(i) and § 1170.12 subd. (a)-(d). Under Penal  
9 Code Section § 1009 which states in relevant part, "A criminal defendant may  
10 not be convicted of an offense not shown by evidence given at the Preliminary  
11 Hearing."

12 What was stated in the Preliminary Hearing Transcript on (page 118) lines  
13 19-21 and lines 27-28 and (page 119) lines 1-5 was that any Special Allegations  
14 to be filed would be within (10) ten days. That was never done or proven  
15 at Preliminary, so Petitioner could not be convicted of said charges. In  
16 testing sufficiency of evidence. "[T]he proper test to determine a claim of  
17 insufficient evidence in a felony conviction or criminal case is whether on  
18 the entire record a rational trier of fact must find Petitioner guilty beyond  
19 a reasonable doubt." [Jackson v Virginia (1979) 443 U.S. 307, 318, 319]. A  
20 two tier level was enunciated. First, we must resolve the issue in light  
21 of the whole record...second, we must judge whether the evidence of each of  
22 the essential elements are substantial. California Courts have further defined  
23 how reviewing Courts should determine what is substantial evidence,  
24 "substantial evidence is that which is reasonable, credible, and solid in  
25 value." Substantial evidence was tested, and has been reaffirmed by the  
26 California Supreme Court, the California Appellate Courts have recently  
27 cautioned that evidence and findings in regard to judgments by strictly  
28 informed as recognized in [Lillian v Superior Court (1984) 160 Cal. App. 3d.

1 314, 320]. There are varying degrees of proof required by law. Evidence  
2 Code Section § 115...specifies these different burdens of proof. 1) Proof  
3 beyond a reasonable doubt, 2) Proof by clear and convincing evidence, 3) proof  
4 by a preponderance of the evidence. Clear and convincing evidence requires  
5 a finding of high probability. Such a test requires evidence be clear as  
6 to leave no substantial doubt, sufficiently strong enough to command  
7 unhesitating assent of every reasonable mind. A preponderance of evidence  
8 standard simply requires the trier of fact is more probable than its now  
9 existence. Due Process prohibits a criminal conviction except beyond a  
10 reasonable doubt, proof of every fact necessary to constitute the charged  
11 crime. [In *Re Winship* (1970) 397 U.S. 358, 361-364, 90 S. Ct. 1068]  
12 Specifically requires the Constitution guarantee that the prosecution has  
13 to prove every element of a crime beyond a reasonable doubt, not merely a  
14 preponderance of the evidence.

15 With regard to the Petitioners prior felony convictions, the assertion  
16 by the District Attorney that the Petitioner had been convicted of any prior  
17 felony convictions was abrogated when the State failed to provide sufficient  
18 evidence of the priors at the Preliminary Hearing or prior to dismissing the  
19 jury. As has been decided on numerous occasions in this Court, when a prior  
20 conviction becomes an element of a current offense, and the defendant is tried  
21 by a jury, the exact same jury must be the decider of those priors by setting.  
22 When the Presiding Judge in the Petitioners case dismissed the jury after  
23 trial without that jury having been seated at a separate bifurcation  
24 proceeding, the Judge is essence dismissed those priors. [People v Hockersmith  
25 Cal. App. 3d. 968].

26 There was no evidence provided to find guilt in alleged Special  
27 Allegations charged to Petitioner as stated in Transcripts provided. An  
28 information was to be filed and never was. petitioner was found guilty and

1 convicted of those allegations. Please refer to (pages 624-626) of the Trial  
2 Transcripts. For these reasons, Petitioners sentence must be reversed and  
3 remanded back to the Trial Court for an Evidentiary Hearing (Exhibit A).

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## II

PETITIONERS ILLEGAL RESTRAINT IS BECAUSE HE WAS DENIED HIS CONSTITUTIONAL RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES AND BY ARTICLE I, SECTION 15 OF THE CALIFORNIA CONSTITUTION

STATEMENT

Petitioner, Alvin S. Flowers was charged with three counts and two Special Allegations. It was further alleged the Petitioner suffered three prior felony convictions under California Penal Code Section § 667 subd. (b)-(i) and § 1170.12 (a)-(d) as well as three prior prison terms under Penal Code Section 667.5 subd. (b). During Petitioners Preliminary Hearing, Defense Counsel agrees with District Attorney (Mr. Gini) on (page 4) line 7-28 about stipulations of a blood alcohol level with no evidence submitted by the District Attorney. Again on (page 5) line 4-28, Defense Counsel (Mr. Klein) agrees to find Petitioner guilty of G.B.I. to Lamb and Daley. As standard Defense strategy by Counsel, Petitioner would hope Counsel acts in a competent and reasonable potential for a meritorious defense. Petitioner was also arraigned on September 11, 2001 after being under arrest on September 5, 2001. Six (6) days from arrest to arraignment, four (4) days past the required time by the California Penal Code Section § 859 (b). Defense Counsel for the Petitioner should have filed a 995 motion for dismissal on behalf of his clients interest. Furthermore, during the trial of Petitioner, please refer to (page 615) of the Trial Transcripts lines 15-28. Defense Counsel persuades his Client to admit his priors before the jury comes back for the plea deliberation. Petitioner is somewhat pressured by the Court to dispose of his priors right then. It Specifically states that a defendants priors that are not admitted must be decided after the jury has decided the guilt phase unless the defendant admits his priors. On (page 616 thru 620) of the Trail Transcripts, the Court has Petitioner admit to his priors before the jury returns with a deliberation finding. This is a violation of petitioners Due

1 Process Rights.

2 POINTS AND AUTHORITIES

3 The standard of review for effective assistance of counsel, the Petitioner  
4 must prove the burden of an adequate assistance of counsel. The defendant  
5 must prove counsel failed to act as a reasonable competent attorney and that  
6 defense counsels acts resulted in the withdrawal of a potentially meritorious  
7 case of defense. [People v Pope, supra, 23 Cal. 3d. pg. 425]. Defense counsel  
8 provided no assistance in failing to file 995 motion for dismissal at  
9 arraignment as well as at Preliminary Hearing where counsel allows the District  
10 Attorney to enter admissible prejudicial evidence on hearsay that is very  
11 questionable which is stated later in the Preliminary Hearing it would be  
12 ruled on later within (10) ten days. (Pages 118-119) of the Preliminary  
13 Hearing counsel's function in representing a criminal defendant is to assist  
14 defendant, and hence counsel owes client a duty of loyalty and a proper  
15 standard that is reasonably effective assistance. [Strickland v Washington  
16 (1984) 466 U.S. 668, 687, (104 S.Ct. 2052, 2064, 80 L.Ed. 2d. 674)] Defense  
17 Counsel also advised Petitioner to disregard a proffered deal from the District  
18 Attorneys Office of (11) eleven years. Counsel abused his authority by  
19 declining the offer before giving Petitioner his right to refuse or except  
20 the offer. That decision should be solely based on Petitioner or Defendants  
21 choice. [In Re: Alvernaz (1992) 2 Cal. 4th].

22 It is obvious at this point, that trial counsel's defense and advice  
23 was below standard performance and if Defense Counsel had raised a more  
24 diligent approach to offer a more favorable result. It is Petitioner's opinion  
25 Counsel's deficient effort and performance where the defendants interest is  
26 and can be protected by making an argument for a more favorable outcome were  
27 not met here. From counsel's function as assistant to defendant derive the  
28 overarching duty to advocate defendants cause and more pertinent duties to

1 consult with defendant on important decisions and to keep defendant informed  
2 of all developments and offers made by the District Attorney. Furthermore  
3 to allow Petitioner to admit his prior felony convictions before the Judge  
4 has reached a verdict was ill-advised and Defense Counsel was not conscientious  
5 in his actions as an advocate for the defendant. Therefore, based on the  
6 order to prove prejudice in a claim of ineffective assistance of counsel,  
7 Petitioner has shown that through the unprofessional errors, the proceedings  
8 and outcome would have been a different and more favorable outcome. Although  
9 the record is silent on why defense counsel was deficient on declining the  
10 proffered deal by the District Attorney for (11) eleven years. The record  
11 does show certain deficient tactical decisions and objections. These issues  
12 have been properly presented on appeal. There can be no satisfactory  
13 explanation why defense counsel's misconduct most certainly undermined  
14 Petitioners outcome. Petitioner's conviction must be reversed because trial  
15 counsels ineffective representation caused due prejudice. (Exhibit B)

## III

PETITIONERS CONVICTION MUST BE REVERSED DUE TO HIS SPEEDY TRIAL RIGHT  
WAS VIOLATED UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION

STATEMENT

Petitioner, Alvin S. Flowers was arrested on September 5, 2001 by California Highway Patrolman (William Weldon) in Placer County. Petitioner was arraigned on September 11, 2001 with no probable cause hearing held within (48) forty eight hours as mandated by the State and Federal law. Further there was no Preliminary Hearing held within (10) ten days. Under California Constitution Article I, Section 15, a person becomes an accused when an accusatory pleading is filed, or an arrest is made, whichever comes first. Due to a series of procedural errors, Petitioner was also denied a timely Preliminary Hearing which is also mandated by law to take place no later than (60) sixty days after arraignment. This caused a fundamental miscarriage of justice to occur which caused Petitioner to suffer prejudice during trial. [Dogget 505 U.S. 651] Petitioner suffered prejudice during the period of confinement to trial while lay opinion assessment was being made by the witnesses and prosecution to combine under prejudice and weakened his case. The Court stated in Dogget, the Court did not require affirmative proof as to the exact prejudice. It stated [E]xcessive delay presumptively compromised the reliability of a trial in ways that neither party can prove or for that matter, identify. While such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other Barker Criteria, [Barker v Wingo (1972) 407 U.S. 514, 33 L.Ed. 2d. 101, 92 S.Ct. 2182], it is part of the mix of relevant facts and its importance increases with the length of delay. Because the Sixth Amendment right has been violated by the undue delay or extensive continuances in Petitioners case from arrest on September 5, 2001 to arraignment on September 11, 2001, to Preliminary Hearing on November 28,

2001 to trial on January 8, 2003, and nonetheless substantial.

### POINTS AND AUTHORITIES

A probable cause hearing must be held promptly after arrest for persons arrested without a warrant, [*Gerston v Pugh* (1975) 420 U.S. 103, 125, 95 S.Ct. 854, 8681] At the latest, it must be held within (48) forty eight hours after arrest. Weekends and Holidays are not excluded from the (48) hours. The hearing may be combined with the arraignment if held within the (48) hours. [*County of Riverside v McLaughlin* (1991) 500 U.S. 44, 111 S.Ct. 1661, 1670].

The Preliminary Hearing in Petitioner's case was not held until November 28, 2001. The Preliminary Hearing pursuant to Penal Code Section § 859 (b) must be held within (10) ten court days for a defendant who has been in custody ten or more days solely on a felony complaint. There may be continuances beyond the ten day court period only if defendant Personally waives that limit. (Pen. Code § 859 (b)). There were no time waivers made personally by the Petitioner at arraignment. If the defendant is not in custody, or if the hearing is being continued for good cause, the Preliminary Hearing must be set within (60) sixty days of arraignment or the case must be dismissed by the court. (Pen. Code § 859 (b)). There is prejudice in the delay of Petitioner's trial and Preliminary Hearing as well as his arraignment and must be addressed by the District Court. [*U.S. v Marion* (1971) 404 U.S. 307, 92 S.Ct. 455][*Struck v U.S.* (1973) 412 U.S. 434, 93 S.Ct. 2260].

Further presenting a waiver from Petitioner on silent record is impermissible. The record must show, or there must be an allegation and evidence which show that the accused was offered counsel of waiver but intelligently and understandably rejected the offer, anything less is not a waiver. By presuming a waiver of fundamental rights such as a speedy trial, from inaction is inconsistent with the courts pronouncement on waiver of constitutional rights. The Court has ruled similarly with respect to waiver

1 of other rights designed to protect the accused. [Miranda v Arizona (1966)  
2 385 U.S. 436, 475-476; 86 S.Ct. 1602] There are cases in which delay  
3 appreciably harms the defendants ability to defend himself, moreover, a  
4 defendant confined to jail prior to trial is obviously disadvantaged by delay  
5 as is a defendant released on bail, but unable to lead a normal life because  
6 of community suspicion along with his own anxiety. A defendant has no duty  
7 to bring himself to trial, the state has the duty of insuring that the trial  
8 is consistent with due process. The factor is the prejudice to the defendant.  
9 Prejudice should be assessed in the light of the interests of the defendants  
10 which the speedy trial right defends and was designed to protect. In this  
11 case the Petitioner along with the other passengers (witnesses) memories are  
12 all impaired by the delay to an already skewed evidentiary finding at the  
13 scene from alcohol and the accident itself. Lamb and Daileys statements were  
14 given while intoxicated at the scene, (CHP) officer Weldon's lay opinion of  
15 truth-fulness of Lamb and the undue delay of trial was extremely prejudicial  
16 in fairness to Petitioners Due Process and Speedy Trial Rights. Loss of memory  
17 isn't always reflected on the record, because what is forgotten can rarely  
18 be shown. Prosecution Witnesses who are unable to recall such facts of distant  
19 past.

20 Petitioner asks the Court to weigh the deficiency and difficulty to  
21 illustrate a fairness of his speedy trial rights and consider the prejudice  
22 and extraordinary circumstance of balancing his due process. Petitioner asks  
23 his judgment be reversed and remanded back to court for an evidentiary hearing.

24 Wherefore, Petitioner prays that this Court will order appointment of  
25 counsel to represent Petitioner regarding the matters contained herein because  
26 of the complex legal nature of the arguments made, and because Petitioner  
27 is indigent and cannot afford counsel to represent him.

## IV

THE COURT ERRED IN IMPOSING A FINE UNDER GOVERNMENT CODE SECTION 13967, SUBDIVISION (a) WITHOUT ASCERTAINING PETITIONERS ABILITY TO PAY.

A) In imposing a restitution fine under government code section 13967, subd. (a). The Trial Court must consider a defendants ability to pay.

In this matter, a (\$5,000) five thousand dollar restitution fine pursuant to Government Code Section 13967, Subd. (a) was assessed at the time Petitioner was sentenced. Government Code Section 13967, Subd. (a) as amended effective September 12, 1992 provides:

"In addition, if a person is convicted of one or more felony offenses, the court shall impose a separate and additional restitution fine of not less than Two hundred dollars (\$200), subject to the defendants ability to pay it, and not more than ten thousand (\$10,000) dollars."

The emphasized language was added by the 1992 amendment because the previous version of Government Code Section 13967, Subd. (a) did not include any such language, the language changed has been changed under a new statute which evidences a requirement that trial courts determine the defendant's ability to pay a restitution fine before imposing one.

The use of the phrase, "subject to" in statutes concerning orders to pay reflects a clear legislative intent to require the court to make a determination of ability to pay prior to its order. [People v McMahan (1992) Cal. App. 4th 740, 749]. In McMahan, this court interpreted Penal Code Section § 290.3, which provides for fines of (\$100) for a first offense, and (\$200) for a second offense, "unless the court determines a defendant does not have the ability to pay," as not creating a requirement that the court determine ability to pay prior to its order. The court noted that if the legislature had wanted to require a determination of ability to pay prior to its order, it could have used the words "provided" or "subject to" instead of "unless".



(Id. emphasis supplied) Because those words were not used, the court affirmed a fine imposed without determination of defendants ability to pay. Unlike the statute at issue McMahan, Government Code Section 13967, Subd. (a) uses the language, "subject to" bringing it in the requirement of assessment of ability to pay contemplated, but not present in McMahan.

Further, the amount of the fines at issue in Penal Code Section 290, (\$100) - (\$200) was noted by the McMahan court as being sufficiently de minus so that the legislature might have chosen not to burden the courts with the requirement to determine ability to pay before ordering them. In contrast, fines imposed under Section 13967, Subd. (a) may involve sums as large as (\$10,00), so extension of McMahan logic compels conclusion that the legislature intended to include in the statutes a requirement of prior determination of ability to pay. It could be argued that if the court imposes the minimum fine of (\$200), it need not ascertain ability to pay. However, in only citable case interpreting Section 13967, Subd. (a), [People v Frye (1994) 21 Cal. App. 4th 1483], the Third District held that, "even the imposition of the minimum fine must be subject to a defendants ability to pay." [People v Frye, supra, 21 Cal. App].

B) The imposition of a fine under a statute requiring a prior determination of a defendant's ability to pay is valid only where the court makes a required Express Determination on the record.  
For the reasons discussed above, Government Code Section 13967, Subd.

(a) is a statute which requires a prior determination of ability to pay.

An examination of analogous statutes requiring such a determination demonstrate that fines imposed without such determination are invalid. Please see [People v Wardlow (1991) 227 Cal. App. 3d. 360, 372] no excuse for courts failure to determine whether Petitioner has the ability to pay a restitution fine pursuant to (Penal Code Section § 1203.1h); [People v Adams (1990) 224 Cal. App. 3d. 705, 712-713] court erred in failing to determine whether appellant



1 had ability to pay pursuant to (Penal Code Section § 1203.1b). Moreover,  
2 the court's consideration of the ability to pay must be a matter of record  
3 in order to ensure that the court was aware of its discretion and exercised  
4 it, and to permit an appellate review, (see e.g.) [People v Goulart (1990)  
5 224 Cal. App. 3d. 71, 84][People v Ryan (1988) 203 Cal. App. 3d. 189, 196]  
6 [People v Vournazos (1988) 198 Cal. App. 3d. 948, 957] In [People v Barker  
7 (1986) 182 Cal. App. 3d. 921] The Court reversed a restitution fine imposed  
8 under pre-1984 version of Government Code Section § 13967, Subd. (a) because  
9 it appeared from the record that the trial court failed to consider the  
10 appellants ability to pay. [*Id.* at pg. 943] The record in Barker revealed  
11 discussion between the court and counsel indicating assumptions that appellant  
12 would be earning money in state prison and might even some day manage to obtain  
13 other money through a judgment or award. For instance, the prosecutor  
14 suggested that the appellant might pay a portion of the restitution with the  
15 money appellant earned in prison, and pay the rest following his release.  
16 Despite the court's acknowledgment that these in the record allowed an  
17 implication that the trial court had considered the defendant's ability to  
18 pay, in the absence of a clear determination by the court on the record, it  
19 held that "The more appropriate interpretation is that the trial court failed  
20 to determine the ability to pay and remand is therefore necessary to permit  
21 trial court to make this determination." (*Id.* at pp. 943-944) Not even the  
22 perfunctory level of discussion found inadequate in Barker occurred in  
23 Petitioners case.

24 C) Appellant did not waive his right to a determination of his ability  
25 to pay a restitution fine.

26  
27 In the case of [people v Castro (1994) 94 Cal. App. 4th 3569] this court  
28 examined the issue of waiver under section § 13967, Subd. (a). In Castro,

1 the probation report recommended the imposition of a (\$5,000) fine, and  
2 appellant did not object to this recommendation. Blankenship held that the  
3 failure to object to a restitution order to be paid to the victim under Section  
4 § 13967, Subd. (c) amounted to a waiver of the right to challenge accuracy  
5 of monetary claims upon which the order was based. However, the reviewing  
6 court reached the merits of appellant's claim that the trial court erred in  
7 ordering restitution in favor of a victim's insurer. In Castro, this court  
8 interpreted Blankenship as follows:

9 "We read Blankenship as holding the objections to the procedure followed  
10 by the sentencing court in making restitution orders are waived by failure  
11 to raise them in trial court, but a claim that the sentencing court has  
12 exceeded its statutory power to impose a restitution fine may be raised for  
13 the first time on appeal." (Id. citing) [People v Neal (1993) 19 Cal. App.  
14 4th 1114, 1120]

15 Castro holds as follows:

16 "The courts power to impose a fine pursuant to Government Code Section  
17 13967, Subd. (a) is thus limited by statutory language. It follows that if  
18 there is no evidence of information before the court supporting a finding  
19 of ability to pay, the court has exceeded its statutory power of imposing  
20 the fine. Thus, we hold the appellant did not waive his right to challenge  
21 the restitution order on the ground that it is unsupported by evidence of  
22 ability to pay."

23 Castro also discusses McMahan supra; an earlier decision by the District  
24 Court. It distinguishes McMahan is unlike Section § 13967. It does not use  
25 the words, "Subject to" and thus a finding of ability to pay was not  
26 statutorily required as it is in cases decided under Section § 13967.  
27 Petitioner is aware that in [People v Schenck (1994) 23 Cal. App. 4th 698]  
28 the Third District held that a failure to raise the ability to pay issue in

1 Trial Court waives it on appeal. This case is irreconcilable with Castro.  
2 Wherefore, for all the foregoing reasons, Petitioner respectfully moves this  
3 court find that the court erred in imposing a (\$5,00) five thousand dollar  
4 restitution fine without considering his ability to pay and that this portion  
5 of the judgment requires reversal. Please refer to sentencing transcript  
6 pages (639-640). (Exhibit C.)  
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V

PETITIONER BELIEVES THE TRIAL COURT ABUSED ITS DISCRETION BY HEARING PETITIONERS APPEAL IN LIEU OF NEUTRAL JUDGE FROM THE APPELLATE COURT IN CALIFORNIA RULES OF COURT § 41.35

Petitioner would ask the District Court to hold an evidentiary hearing under California Rules of Court Section § 41.35 whereas the Presiding Judge of the Trial Court ruled on Petitioner's Writ of Habeas Corpus on Appeal. Petitioner would ask also that there be an evidentiary hearing on abuse of discretion by the Placer County Superior Court in failing to notify Petitioner of order returned to sender on Petitioner's Appeal. There was no effort to readdress the order by the court with the correct address and resend the order to Petitioner. Return to sender notified the Clerk of what was missing in the proper address and Petitioner's CDC number was on the Writ of Habeas Corpus. Petitioner is under a requirement to meet standards of time on response and ask the District Court to forego the constraint under Petitioners circumstance as a prisoner in California Department of Corrections. Please refer to, [Griffith v Kentucky (1987) 479 U.S. 314][People v Murtshow (1989) 48 C. 3d. 1001, 1013, 258 CR. 821] Exhibit D Attached.

Dated: 11-17-07

Respectfully Submitted,

  
Alvin Scott Flowers, T-91323

ALVIN SCOTT FLOWERS  
Petitioner,

**AFFIDAVIT AND MOTION FOR  
LEAVE TO FILE AND PROCEED  
IN FORMA PAUPERIS IN THE  
FOREGOING ATTACHED MATTER**

**MICHAEL EVANS, WARDEN, ET, AL.**  
**Respondent,**


IN SUPPORT OF MY APPLICATION, I DECLARE:

4. The nature of the attached action is briefly as follows:

1  
2 For all the foregoing reasons, I pray this court grant  
3 this action and or motion, permitting me to proceed IN FORMA  
4 PAUPERIS with the attached motion(s).

5 I declare under penalty of perjury under the laws of the  
6 State of California that the foregoing statements are true and  
7 correct.

8 Executed this 11 day of 17 2007 at Salinas  
9 Valley State Prison, in Monterey County California.

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12 Alvin Scott Flowers T-91323  
13 Petitioner, IN PRO PER  
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VERIFICATION

I, Alvin Scott Flowers , State:

I am the petitioner in this action, I have read the foregoing Writ of Habeas Corpus, Convict. Sen. and the facts stated therein are true of my knowledge, except as to matters that are therein stated on my own information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at SALINAS VALLEY STATE PRISON

on 11 - 17 2007.

Alvin Scott Flowers  
ALVIN SCOTT FLOWERS Petitioner

T-91323  
State ID Number

**PROOF OF SERVICE**

I, Alvin Scott Flowers . DECLARE:

That I am over the age of 18, and a party to the herein cause of action, and that I reside at Salinas Valley State Prison, Soledad, California in Monterey County.  
My Mailing Address is:

ALVIN SCOTT FLOWERS T-91323  
SALINAS VALLEY STATE PRISON  
FACILITY B, BLDG. 5 - 131  
P.O. BOX 1050  
SOLEDAD, CA 93960-1050

On 11 - 17 - 2007, I delivered to Prison Officials for mailing the following legal documents:

**WRIT OF HABEAS CORPUS, CONVICTION AND SENTENCE**

In a sealed envelope by delivery to Prison Housing Officers, to be placed into the inmate legal mail in accordance with the Supreme Court Case; [Houston B. Lack, (1988) 487 U.S. 266, 108 S.Ct. 2379]. and address to:

CLERK OF THE COURT FOR THE NORTHERN DISTRICT  
UNITED STATES DISTRICT COURT NORTHERN  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CA 94102

I declare under penalty of perjury under the laws of the State of California, that the foregoing statements are true and correct.

Executed at Salinas Valley State Prison, Soledad, California

on 11 - 17 - 2007

  
ALVIN SCOTT FLOWERS

Petitioner, In Pro Per



EXHIBIT A

Preliminary Hearing Transcripts

<u>Line #</u>	<u>Page #</u>
7-28	4
5-27	5
1-28	6
1-15	7
9	7
1-28	118
1-28	119
1-28	120
1-28	118
19-21, 27-28	119
1-5	

Trial Transcripts

<u>Line #</u>	<u>Page #</u>
1-28	624
1-28	625
1-28	626

1 the preliminary examination in this case. Both sides ready to  
2 proceed?

3 MR. GINI: Yes, your Honor.

4 MR. KLEIN: Yes, your Honor.

5 THE COURT: Are there any motions to be made before we  
6 talk about some stipulations? All right. Hearing no motions,  
7 I understand there were a few stipulations for purposes of  
8 preliminary examination. My understanding is that for purposes  
9 of preliminary examination only that the defense was willing to  
10 stipulate to a blood alcohol taken at a .18 for Mr. Flowers  
11 some short period of time after the automobile wreck.

12 MR. GINI: Your Honor, I believe what the stipulation is  
13 that Jon Knapp is deemed to have testified the blood alcohol  
14 that was taken more than two hours after the crash is a .18.  
15 And that if Jon Knapp were to testify, he would indicate that  
16 the defendant's alcohol at the time of driving would have been  
17 above a .20.

18 THE COURT: Mr. Klein, for purposes of preliminary  
19 examination?

20 MR. KLEIN: I agree that's what Mr. Knapp would have  
21 testified to, and I will so stipulate.

22 THE COURT: All right. Also I understand there was a  
23 stipulation as to great bodily injury as to certain victims.

24 MR. GINI: Yes, your Honor. They are alleged in one  
25 count at this point. We reserve the option to break them out  
26 into separate counts, the multiple victims in the case, along  
27 with the decedent -- we'll get to that stipulation in a  
28 moment -- along with the decedent, as well as Jonathan Lamb and  
4

1 Betty Daily, and the stipulation for purposes of the prelim is  
2 that they received great bodily injury as a result of this  
3 collision.

4 MR. KLEIN: We had a discussion about this in chambers.  
5 I think what I told Mr. Gini prior to going into chambers is  
6 that I was going to stipulate to all medical records and not  
7 have an issue with that. My read of the medical records does  
8 not indicate GBI with those two people. Mr. Gini has assured  
9 me that if it does not appear on better review of the medical  
10 records to be a GBI situation with those two victims, he won't  
11 go forward with that, and I have full confidence in Mr. Gini in  
12 that regard.

13 For the purposes of this hearing, I'll let that go. I  
14 thought what I was stipulating to really was that the people  
15 suffered injuries, not that it was great bodily injury, because  
16 my reading of those reports, I'll let that go for the purposes  
17 of this hearing. I don't think that is critical in the case in  
18 that we have a Three Strikes case.

19 And the other stipulation I think we're going to get to  
20 next is that one of the occupants of the vehicle, in fact, died  
21 as a result of this accident, and I will stipulate that the  
22 accident was the cause of death and that she was in the car.

23 THE COURT: All right. Well, then for purposes of  
24 preliminary examination only, are you willing to just allow the  
25 Court to find GBI as to Lamb and Daily with the understanding,  
26 of course, that more work will be done with regard to the  
27 actual injuries?

28 MR. KLEIN: Yes.

1 THE COURT: All right. And you join in the stipulation,  
2 Mr. Gini?

3 MR. GINI: Yes, your Honor.

4 THE COURT: Okay. Appreciate that. I understand the  
5 agreement and certainly if they're not there, they're not  
6 there.

7 MR. GINI: That's correct.

8 THE COURT: Next stipulation as to the decedent in the  
9 case?

10 MR. GINI: Your Honor, if the Court pleases, we could  
11 mark the report that was prepared by Dr. Henrikson, the  
12 pathologist for the County, which sets forth the cause of  
13 death. I could ask that be marked and received into evidence,  
14 and it recites the cause of death in there, the multiple blunt  
15 force trauma.

16 THE COURT: Any objection to that, Mr. Klein, for  
17 purposes of the preliminary examination?

18 MR. KLEIN: No.

19 THE COURT: Let's have that report marked as number 1 for  
20 identification. Mr. Klein, you also have a copy of that?

21 MR. KLEIN: Yes, I do, your Honor.

22 THE COURT: Be marked as number 1 and admitted into  
23 evidence by stipulation, gentlemen?

24 MR. GINI: Yes, your Honor.

25 THE COURT: Mr. Klein?

26 MR. KLEIN: Stipulated.

27 THE COURT: All right. Stipulated into evidence.

28 ////

1 (Exhibit No. 1 was marked and received  
2 into evidence.)

3 THE COURT: Any other stipulations entered into at this  
4 time?

5 MR. GINI: The only other discussion, your Honor, was  
6 about prior convictions and so forth, and I'd indicated to the  
7 Court the preference to file an information after today's  
8 hearing and obviously have the opportunity to make adjustment  
9 where necessary with regard to what's proved here at the prelim  
10 and with regard to prior convictions if we learn anything  
11 different about them.

12 THE COURT: All right. Understood. Thank you. And who  
13 would be your first witness, please?

14 MR. GINI: People call California Highway Patrol Traffic  
15 Officer Herbert.

16  
17 JEFFREY HERBERT

18 called as a witness on behalf of the People herein was sworn,  
19 examined, and testified as follows:

20 THE COURT: Please come forward. Good morning.

21 OFFICER HERBERT: Morning, your Honor.

22 THE COURT: Please raise your right hand, sir.

23 Do you solemnly swear that the testimony you are about to  
24 give in this hearing shall be the truth, the whole truth, and  
25 nothing but the truth, so help you God?

26 THE WITNESS: I do.

27 THE COURT: Please state your name and spell your last.

28 THE WITNESS: Jeffrey Herbert, H-e-r-b-e-r-t.

7

EXHIBIT B

Preliminary Hearing transcripts

<u>Line #</u>	<u>Page #</u>
7-28	4
4-28	5
1-28	118
1-28	119

Trial Transcripts

<u>Line #</u>	<u>Page #</u>
15-28	615
1-28	616
1-28	617
1-28	618
1-28	619
1-28	620

1 either passenger or driver of the car.

2       However, I remind the Court that the officers testified  
3 that there was significant intrusion into the traffic -- into  
4 the passenger compartment in the driver's side rear seat which  
5 is where all the witnesses say Rennea Hernandez was seated.  
6 One officer stated that kind of intrusion would be responsible  
7 for a significant injury. She is the deceased party here.

8       The Court has an indication from the autopsy report as to  
9 the extent of her injuries. Moreover, the injuries that were  
10 received by the driver are more on the right-hand side and do  
11 not indicate that intrusion would have been near where he was  
12 seated. So the weight of that evidence also supports that he  
13 was driving the vehicle.

14       As far as the rest, I believe there's a stipulation and  
15 the People's burden has been sustained as to Count One, Count  
16 Two, and Three.

17       THE COURT: Thank you. Mr. Klein?

18       MR. KLEIN: Submit it.

19       THE COURT: All right. Pursuant to the various  
20 stipulations as to blood alcohol, great bodily injury to the  
21 victims for the purposes of preliminary examination, and in  
22 considering Item Number 1, which was basically the coroner's  
23 report with regard to the deceased person, Rennea Hernandez,  
24 the Court does find that there's sufficient cause to believe  
25 Count One, Two, and Three have been committed by this  
26 defendant, and that the defendant may be guilty thereof.

27       Therefore, he is held to answer for those. Also as to the

28       allegation of bodily injury to more than one victim, and in a

118

1 special allegation of great bodily injury as alleged at page 3.

2 It is my understanding that both sides have requested  
3 this be set over for the purpose of allowing the district  
4 attorney to file an information in approximately ten days.

5 MR. GINI: That's correct.

6 THE COURT: All right. I will do that. I intend to go  
7 ahead and set this in Department 13 for arraignment.

8 MR. KLEIN: Your Honor, I was just going to ask that  
9 perhaps if -- since you heard the preliminary hearing, if we  
10 could, in fact, set it here and maybe discuss the case.

11 THE COURT: I'm not going to do the arraignment, but if  
12 you would like to discuss it after I set it for arraignment  
13 today, I'd be happy to discuss it with you.

14 MR. KLEIN: That's fine. Could you set it, though, in  
15 Judge O'Flaherty's courtroom?

16 THE COURT: I'm not going to do that because that causes  
17 transportation issues. If it is only for an arraignment, I  
18 want to set it in Department 13 on a day that you are there or  
19 Mr. --

20 MR. KLEIN: I don't ever go to 13. That's just why -- I  
21 work out of Judge O'Flaherty's court that's why I asked that.

22 THE COURT: We all know what Judge O'Flaherty's court  
23 looks like most days. That's why I am setting it in 13.

24 MR. KLEIN: That's fine.

25 THE COURT: What day would be most convenient for either  
26 of you, Monday/Tuesday or Thursday/Friday?

27 MR. GINI: I think Monday afternoon is convenient.

28 Monday morning, that's fine too.

119



1 THE COURT: That will be fine. How about we set this for  
2 Monday, December 10th, 8:30 in Department 13 for arraignment.  
3 That will be the order for today. I'm going to order the items  
4 of evidence may be returned for the proffering parties for  
5 safekeeping. Again, gentlemen, if you wish to discuss the case  
6 at this time, I'd be happy to do so with you. And even in the  
7 future if we can work out a time, I'll -- if I have time to do  
8 that, I'll be happy to do that. The defendant is remanded to  
9 the custody of the sheriff on the bail as set.

10 (Proceedings concluded at 3:30 p.m.)

11 (Nothing omitted.)

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1 THE COURT: The record will reflect we're out of the  
2 presence of the jury. A couple of matters I want to attend do  
3 at this point.

4 I will indicate for the record a stipulation that the  
5 Court and counsel have settled the instructions prior to the  
6 Court's delivery and the instructs as read are a stipulated set  
7 of instructions by both sides reflecting all tactical  
8 considerations to the extent the instructions are given or not  
9 given unless at this time counsel has any exception to that  
10 stipulation to state on the record.

11 Mr. Tellman?

12 MR. TELLMAN: No.

13 THE COURT: Mr. Klein?

14 MR. KLEIN: No.

15 THE COURT: We now have left the question of the prior  
16 convictions. Have you made a decision as to whether any  
17 evidence needs to be presented or an admission?

18 MR. KLEIN: We're not going there.

19 THE COURT: In what sense?

20 MR. KLEIN: We're not going to have them make that  
21 decision, at least from my perspective right now.

22 THE COURT: At one o'clock be prepared to present my  
23 evidence. I'll deal with it one way or the other. One  
24 o'clock, when the jury comes in. It's very difficult to  
25 conclude it at that point, so I want to take care of this --

26 MR. KLEIN: Can I talk to my client real briefly about  
27 that?

28 THE COURT: Sure.

1 (Conference between counsel and  
2 the defendant.)

3 MR. KLEIN: I've discussed it with my client, and if we  
4 reach that portion of the trial, he will admit the prior  
5 convictions.

6 THE COURT: Well, I really want to take care of it now.

7 Basically, Mr. Flowers, the way it works, your admission  
8 of the prior convictions has no legal effect whatsoever if  
9 you're found not guilty. But if you are found guilty,  
10 obviously, it will affect the ultimate disposition in the case.  
11 The reason I want to take care of it now, sometimes this gets  
12 overlooked and I don't want it overlooked. And it's difficult  
13 at the end of the case after the jury has returned a verdict to  
14 do it because the jurors wants to talk to the lawyers and  
15 lawyers want to talk to lawyers, and it creates a problem.

16 If you want it to talk this over with your attorney, I'll  
17 put this over to one o'clock and hear the evidence or take your  
18 admissions at that point. I want to take go care of it  
19 sometime or other.

20 If you need more time to talk to Mr. Klein, I'll be happy  
21 to give it you. I want to take care of it at this stage of the  
22 trial.

23 (Conference between counsel and  
24 the defendant.)

25 MR. KLEIN: He's indicated he wants to take care of it  
26 now. I'm assuming he wants to admit the prior convictions.

27 THE COURT: Let me ask you a couple of other questions,  
28 Mr. Flowers.

1           You should understand that a trial on the prior  
2       convictions has the same rights as a trial on the principle  
3       case. So you have waived your right to a jury trial on the  
4       issue of the prior convictions, but you have the right for me  
5       to receive evidence and to have a trial on whether or not you  
6       were actually convicted of the prior serious felony conviction.

7           At that trial phase, you have the right to confront and  
8       cross-examine any witnesses that would be called.

9           You have the right to bring into court any witnesses or  
10      evidence that might help your case.

11          And also have the right to remain silent.

12          Do you understand all of that?

13          THE DEFENDANT: Yes, I do.

14          THE COURT: You also need to understand that the  
15      consequences of your admissions, as as I indicated earlier, if  
16      you admit the prior convictions at this stage of the trial but  
17      are found not guilty of the principle crimes, then it will have  
18      no effect on on you whatsoever. You'll walk out of the  
19      courtroom.

20          If, however, you are found guilty of any one of the  
21      felonies and three prior serious felony convictions, the  
22      consequence of your admission at that point will mean that the  
23      Court will obligated as a matter of law to impose a sentence of  
24      no less than 25 years to life under the Three Strikes Law.

25          Do you understand that?

26          THE DEFENDANT: Yes, I do.

27          THE COURT: Having all this in mind, do you wish to admit  
28      the prior serious felony convictions?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: On or about June 6, '87, were you convicted  
3 of the crime of robbery in violation of Penal Code 211 in  
4 Sonoma County?

5 THE DEFENDANT: Yes.

6 THE COURT: Also on June 6, '87, were you convicted of  
7 another count of robbery in violation of Penal Code 211 in  
8 Sonoma County?

9 THE DEFENDANT: Yes.

10 THE COURT: February 10th, '92, were you convicted of  
11 residential burglary, a crime, out of Elko, Nevada, on that  
12 date?

13 THE DEFENDANT: Yes.

14 THE COURT: Thank you very much.

15 Also, I didn't address this, but I should address this as  
16 well, an additional allegation.

17 You have three prior prison terms, the issues are the  
18 same. You have the right to a jury trial.

19 The right to a court trial.

20 The right to confront witnesses.

21 The right to bring in evidence.

22 And the right to remain silent as to whether or not you  
23 suffered the prior prison terms.

24 Again, if you admit the prior prison terms, it has  
25 absolutely no effect on you now. If you're found not guilty,  
26 you still walk out of the courtroom. If, however, you are  
27 found guilty of any of the principle offenses, then the law  
28 specifies that each prior prison term adds one year to your

1 sentence.

2 So do you understand the rights I have given you?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand the consequences?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you wish to admit the prior prison  
7 terms?

8 MR. KLEIN: Could I have one question with him right now.

9 THE COURT: Yes.

10 (Conference between counsel and the  
11 defendant.)

12 MR. KLEIN: Go ahead, Your Honor.

13 THE COURT: Mr. Tellman, there is one aspect of the prior  
14 prison terms that I'm going to reserve on if necessary to the  
15 time of sentencing. I note that one prior prison term is  
16 October 12th, '82, and the next prior prison term is  
17 January 6th, '87. That is presumptively washed out, so I'll  
18 take the admission only and it will only have bearing if you  
19 can establish that he was, in fact, in prison custody somewhere  
20 in there, within the five-year window.

21 Otherwise, it will be of no consequence.

22 MR. TELLMAN: Absolutely.

23 THE COURT: With respect to a prison term that started on  
24 or about October 12th, '82, for vehicle theft in Sonoma County,  
25 do you admit that prior prison term?

26 THE DEFENDANT: Yes.

27 THE COURT: The next prior prison term is January 6, '87,  
28 for the crime of robbery out of Sonoma County.

1 Do you admit that prior prison term?

2 THE DEFENDANT: Yes.

3 THE COURT: The residential burglary prison term that you  
4 served in Elko, Nevada, starting February 10th, '92.

5 Do you admit that prior prison term?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Thank you very much.

8 Unless there's anything else, counsel, we'll adjourn, and  
9 we just need to now how to get a hold of you.

10

11 (Proceedings concluded.)

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1 THE COURT: Either side wish to poll the jury with  
2 respect to Count Two?

3 MR. TELLMAN: No.

4 MR. KLEIN: No.

5 THE COURT: The clerk will record the verdict.

6 Verdict with respect to Count Three:

7 "We, the jury in the above-entitled action find the  
8 defendant, Alvin Scott Flowers, guilty of a violation of  
9 California Vehicle Code Section 23153(b), driving with .08  
10 percent of blood alcohol causing jury, a felony, as charged in  
11 Count Three of the First Amended Information."

12 Dated: January 30, 2003; signed by the foreperson.

13 Ladies and gentlemen of the jury, is this your verdict  
14 with respect to Count Three?

15 JURY: Yes.

16 THE COURT: Either side wish to poll the jury with  
17 respect to Count Three?

18 MR. TELLMAN: No.

19 MR. KLEIN: No, Your Honor.

20 THE COURT: Allegation with respect to great bodily  
21 injury:

22 "We, the jury in the above-entitled action, find the  
23 allegation that the defendant, Alvin Scott Flowers, caused  
24 death to victim, to wit., Rennea Marie Hernandez, within the  
25 meaning of Vehicle Code 23558 as alleged in the Information to  
26 be true."

27 Dated: January 30, 2003; signed by the foreperson.

28 Ladies and gentlemen of the jury, is this your verdict



1 with respect to your special allegation?

2 JURY: Yes.

3 THE COURT: Either side wish to poll the jury with  
4 respect to this allegation?

5 MR. TELLMAN: No.

6 MR. KLEIN: No.

7 THE COURT: Second allegation with respect to great  
8 bodily injury:

9 "We, the jury in the above-entitled action find the  
10 allegation that the defendant, Alvin Scott Flowers, caused  
11 great bodily injury" -- and it should be simply "caused injury  
12 to the victim," -- Jonathan Ted Lamb, within the meaning of  
13 Vehicle Code Section 23558, as alleged in the Complaint to be  
14 true."

15 Dated -- undated. I'll fill in the current date of  
16 1/30/03; signed by the foreperson.

17 Ladies and gentlemen of this jury, is this your verdict  
18 with respect to the second allegation?

19 JURY: Yes.

20 THE COURT: Either side wish to poll the jury with  
21 respect to this allegation?

22 MR. KLEIN: No.

23 MR. TELLMAN: No.

24 THE COURT: And a third special allegation:

25 "We, the jury in the above-entitled action find the  
26 allegation that the defendant, Alvin Scott Flowers, again  
27 caused injury to victim, to wit., Betty Louise Dailey, within  
28 the meaning of Vehicle Code Section 23558, as alleged in the

1 Complaint to be true."

2 Again, undated. I will date the form January 30th, 2003.

3 Signed by the foreperson.

4 Ladies and gentlemen of the jury, is this your verdict  
5 with respect to the third special allegation?

6 JURY: Yes.

7 THE COURT: Either side wish to pole the jury with  
8 respect to this allegation?

9 MR. KLEIN: No.

10 MR. TELLMAN: No.

11 THE COURT: Ladies and gentlemen of the jury, this now  
12 completes your service in this case. I want to publicly thank  
13 you for that. This now frees you -- by reaching verdicts in  
14 this case, it now frees you of the admonition not to talk about  
15 the case. You can talk to anyone you wish to about the case,  
16 your spouse, your friends, your co-workers. You can talk to  
17 the lawyers about the case or someone from their offices.

18 At times attorneys do follow up on the verdict and it's  
19 fair to comment, if you wish, on all aspects of the case, how  
20 you reached your decision, what was important, what was  
21 unimportant, all of that.

22 It's also your privilege not to talk about the case if  
23 you don't wish to.

24 You may not be compelled to give any information about  
25 the case if you choose not to. It's the obligation of anyone  
26 contacting you about the case to set a reasonable time and  
27 circumstance about any conversation. And if anyone acts  
28 inappropriately in your judgment, you're to inform the Court

EXHIBIT C

Sentencing Transcripts

<u>Line #</u>	<u>Page #</u>
1-28	639
1-28	6400

1 stayed under the provisions of Penal Code Section 654.

2 The defendant having admitted -- having established  
3 that there are three prior prison terms within the meaning  
4 of Penal Code section 667.5(b) the defendant is ordered to  
5 serve three years determinate consecutive to the life terms  
6 and other determinate terms.

7 Accordingly, the sentence imposed in this case is the  
8 effective term of 35 years to life.

9 To be given credit to the defendant is 598 actual  
10 time, 89 days conduct for a total of 687 days.

11 The defendant is to pay a restitution fine of \$5,000  
12 under Penal Code Section 1202.4(b) and an additional  
13 restitution fine \$5,000 under Penal Code Section 1202.45.

14 Mr. Flowers, it is also my duty at this point to  
15 advise you, you have the right to appeal the judgment of  
16 this Court. If you wish to file an appeal you must do so  
17 within 60 days of today's date. If Mr. Klein has not filed  
18 it for you then it is your obligation to file that notice of  
19 appeal. It is filed with this Court. Not the Court of  
20 appeal.

21 It is your responsibility to designate what you're  
22 appealing from, whether the judgment of this Court or entire  
23 record of this Court. If you wish to appeal the decision of  
24 this Court you have the right to the assistance of an  
25 attorney on appeal. And if you don't have funds to hire  
26 your own then one will be appointed to you. You also are  
27 entitled to free transcripts of the trial court proceedings.  
28 It is your obligation to keep the appellate court notified

1 of your whereabouts if you do file a notice of appeal.

2 You understand the rights I have just explained to  
3 you?

4 THE DEFENDANT: Yes.

5 THE COURT: Finally, it is my duty to inform you as  
6 part of this judgment and sentence that you may be released  
7 on parole after expiration of the term of imprisonment just  
8 imposed unless the Board of Prison Terms waives parole for  
9 good cause. The period of parole shall not exceed five  
10 years unless parole is suspended and you are returned to  
11 custody for violation of parole. In that event, the period  
12 under parole supervision or in custody shall not exceed 24  
13 months from the date of the initial parole. However, if you  
14 abscond any period following suspension or revocation of  
15 parole until you are returned to custody shall not apply to  
16 the limits on the parole term.

17 The defendant is remanded to the custody of the  
18 Sheriff to be delivered to the Department of Corrections  
19 upon preparation of the abstract.

20

21 (Whereupon the matter was concluded.)

22

---oOo---

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EXHIBIT D

1 ALVIN SCOTT FLOWERS, T91323  
2 Salinas Valley State Prison  
3 Facility B, Bldg. 5-131  
4 P.O.Box 1050  
5 Soledad, Calif. 93960-1050  
6 In Pro Per,

7  
8 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
9  
10 IN AND FOR THE THIRD DISTRICT

11 ALVIN S. FLOWERS  
12 Petitioner,

13 v

14 PEOPLE OF THE STATE  
15 OF CALIFORNIA  
16 Respondent,

CASE NO: C044333  
WHC 700

WRIT OF HABEAS CORPUS  
CONVICTION AND SENTENCE

17 Petition for Writ of Habeas Corpus

18 and Brief and Exhibits in Support Thereof

19 Petitioner Alvin Scott Flowers respectfully submits this  
20 Petition to the Appellate Court in answer to an Order of Denial by  
21 the Placer County Superior Court. Mr. Flowers asks the court for  
22 review at the Appellate Court on his Superior Court Case Number:  
23 62-23894 of Placer County. The following brief and exhibits in  
24 support thereof for Petitioners request for review to ask for an  
25 order to show cause on issues therein rasied in said petition in  
26 accordance to the California Rules of Court and in compliance with  
27 the Court of Appeal of the State of California Third District.

28  
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DEC 12 2007  
Clerk Court of Appeal,  
Third Appellate District

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Court of Appeal

THIRD APPELLATE DISTRICT

STATE OF CALIFORNIA

DEENA C. FAWCETT  
CLERK/ADMINISTRATOR

NORMAN H. HAREBOTTLE  
ASSISTANT CLERK/ADMINISTRATOR

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GRACE E. EMERO  
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REBEKAH S. THORNTON  
ANA I. CAVAZOS  
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December 21, 2006

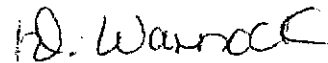
Alvin Scott Flowers  
T-91323  
Salinas Valley State Prison  
P. O. Box 1050  
Soledad, CA 93960-1050

Dear Mr. Flowers:

This court is in receipt of your petition for writ of habeas corpus. I am unable to locate a verification with an original signature. Therefore, I have been instructed to return the petition to you. I am enclosing a judicial form for filing habeas petitions. Please return your petition on this form and sign where indicate with the flag.

Very truly yours,

DEENA C. FAWCETT  
Clerk/Administrator



By: DARLENE A. WARNOCK  
Supervising Deputy Clerk



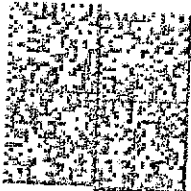
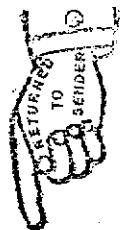
SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER  
CLERK OF THE COURT  
101 MAPLE STREET, 4TH FLOOR  
AUBURN, CALIFORNIA 95603

21-000540-10012

27

28

Superior Court  
County of Placer  
State of California



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ALVIN SCOTT FLOWERS

RETURN TO SENDER  
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WITHOUT A CDC NUMBER.

791323

55603+5026-01 C012



OF THE STATE OF CALIFORNIA

NTY OF PLACER

No. WHC-700

ORDER DENYING PETITION

FOR WRIT OF HABEAS CORPUS

Corpus is denied for the reason that petitioner fails to  
equested.

ting a prima facie case showing that he is entitled to relief  
orpus. (*In re Bower* (1985) 38 Cal.3d 865, 872; *In re*  
n 4.) In that regard, petitioner is obliged to state with  
e petition is based; vague, conclusory allegations are  
.. (*In re Swain* (1949) 34 Cal.2d 300, 302.) Petitioner has  
ich he bases his claim for relief. (*In re Riddle* (1962) 57

**FILED**  
PLACER COUNTY  
SUPERIOR COURT OF CALIFORNIA

JUL '03 2006

JOHN MENDES  
EXECUTIVE OFFICER & CLERK  
BY: Deputy

1 ALVIN SCOTT FLOWERS, T91323  
2 Salinas Valley State Prison  
3 Facility B, Bldg. 5-131  
4 P.O.Box 1050  
5 Soledad, Calif. 93960-1050  
6 In Pro Per,

7  
8 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
9  
10 IN AND FOR THE THIRD DISTRICT

11 ALVIN S. FLOWERS  
12 Petitioner,

13 v

14 PEOPLE OF THE STATE  
15 OF CALIFORNIA  
16 Respondent,

CASE NO: C044333  
WHC 700

WRIT OF HABEAS CORPUS  
CONVICTION AND SENTENCE

17  
18 Petition for Writ of Habeas Corpus  
19 and Brief and Exhibits in Support Thereof

20  
21 Petitioner Alvin Scott Flowers respectfully submits this  
22  
23 Petition to the Appellate Court in answer to an Order of Denial by  
24  
25 the Placer County Superior Court. Mr. Flowers asks the court for  
26  
27 review at the Appellate Court on his Superior Court Case Number:  
28  
62-23894 of Placer County. The following brief and exhibits in  
support thereof for Petitioners request for review to ask for an  
order to show cause on issues therein raised in said petition in  
accordance to the California Rules of Court and in compliance with  
the Court of Appeal of the State of California Third District.

RECEIVED

DEC 12 2007

Clerk Court of Appeal,  
Third Appellate District

Name ALVIN SCOTT FLOWERSAddress SALINAS VALLEY STATE PRISONP.O. BOX 1050 B-1-131SOLEDAD, CA 93960-1050CDC or ID Number T-91323

MC-275

SUPREME COURT  
**FILED**

MAY - 3 2007

Frederick K. Ohlrich Clerk

THE SUPREME COURT

OF THE STATE OF CALIFORNIA  
(Court)

Deputy

ALVIN SCOTT FLOWERS,  
Petitioner

vs.

MICHAEL EVANS, WARDEN, ET, AL.  
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. C044333/WHC 700 - 6223894

(To be supplied by the Clerk of the Court)

**S152382**

## INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

S152382

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re ALVIN SCOTT FLOWERS on Habeas Corpus

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The petition for writ of habeas corpus is denied.

SUPREME COURT  
**FILED**

SEP 19 2007

Frederick K. Ohlrich Clerk

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Deputy

**GEORGE**

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Chief Justice